Mitchell's Disposal Service, Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 371. Cases 33-CA-4910 and 33-RC-2630

February 11, 1982

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On July 31, 1981, Administrative Law Judge Philip M. Browning issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Mitchell's Disposal Service, Inc., East Moline, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

DIRECTION

It is hereby directed that the Regional Director for Region 33 shall, within 10 days from the date of this Decision, open and count the ballot of Alva Suits in the election conducted in Case 33-RC-2630 on August 5, 1980, and prepare and cause to be served on the parties a revised tally of ballots, and thereafter issue the appropriate certification.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate our employees regarding their union membership, activities, or sympathies or the union activities of other employees.

WE WILL NOT solicit grievances from employees in order to weaken their support for the Union.

WE WILL NOT threaten employees with closing the facility or loss of jobs if they select the Union as their bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

WE WILL NOT discharge employees because they have engaged in activity on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 371, or any other organization.

WE WILL offer Alva Suits immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed and make him whole for any loss of earnings he may have suffered as a result of his discharge, with interest.

MITCHELL'S DISPOSAL SERVICE, INC.

DECISION

STATEMENT OF THE CASE

PHILIP M. BROWNING, Administrative Law Judge: The original charge in Case 33-CA-4910 was filed on

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In his Order, the Administrative Law Judge orders Respondent, *inter alia*, to cease and desist from "*in any like or related manner* interfering with, restraining or coercing employees in the exercise of their right to engage in any or all of the activities specified in Section 7 of the Act." (Emphasis supplied.) In his notice to employees, the Administrative Law Judge uses the broad language, "in any other manner." The notice to employees shall be corrected to conform with the Order and shall read narrowly, "in any like or related manner." The attached notice shall be substituted for the notice of the Administrative Law Judge.

June 23, 1980, by Local Union No. 371, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter the Union). An amended charge was filed by the Union on July 23, 1980. A complaint issued on July 30, 1980, alleging that Mitchell Disposal Service[1] (hereafter Respondent) violated Section 8(a)(1) and (3) of the Act by discriminatorily discharging its employee Alva F. Suits on June 7, 1980; by interrogating its employees; by soliciting their complaints and grievances, thereby impliedly promising them benefits; by threatening them with the loss of their jobs if the Union came in; and by threatening to sell or close down its business rather than let the Union in. In its answer Respondent denies the commission of any unfair labor practices.

A hearing[2] was held before me in Rock Island, Illinois, on March 23 and 24, 1981. Post-hearing briefs were filed on behalf of all parties by counsel and have been carefully considered.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

A. *The Business of Respondent*

At all material times, Respondent was a sole proprietorship with an office and place of business located in East Moline, Illinois, where it was engaged in the business of refuse hauling. Some time in the fall of 1980 the business was restructured and incorporated in the State of Illinois. The nature and location of Respondent's business remain the same. During the representative 12-month period immediately preceding issuance of the instant complaint, Respondent received gross revenues in excess of $500,000 and purchased and received goods and materials valued in excess of $50,000 directly from points outside the State of Illinois. I find that Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

B. *The Labor Organization Involved*

The answer admits, and I find, that at all material times the Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

[1] Subsequently incorporated in Illinois as Mitchell's Disposal Service, Inc.

[2] Case 33-RC-2630 was consolidated for hearing with Case 33-CA-4910 to resolve the issue raised by the challenge to the ballot of Alva F. Suits in the representation election conducted on August 5, 1980, inasmuch as Suits' eligibility to vote in that proceeding is dependent upon the dispositon of Case 33-CA-4910.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

At all times pertinent, Dale Mitchell was the owner and operator of Respondent. Following its incorporation in the fall of 1980, he became its president. Prior to incorporation and at all times pertinent, Rosalie Mitchell, Dale Mitchell's wife, worked at Respondent's office as bookkeeper. Subsequent to incorporation, she assumed the title of vice president. From the beginning of 1980[3] until June, the Mitchells' daughter, Debra, worked part time as a driver for Respondent. Beginning some time in June, Debra began working full time for Respondent. At the time of the hearing, she worked in the office and was secretary-treasurer of the corporation.

The Union began its organizational activities in late May, which continued through early June and culminated in the election of August 5, 1980.[4] Patrick Kelly, a business representative for the Union, directed the organizational effort. He became involved when Alva F. Suits (Suits), one of Respondent's employees, telephoned him in late May. Suits briefly discussed with Kelly the possibility of getting the Union in Respondent's facility, and Kelly set up a meeting with Suits and other employees of Respondent to discuss the matter further. At the May 29 meeting, which took place in a local restaurant, between 5 and 12 employees attended, as variously estimated by the witnesses attending, and approximately 5 of those attending signed union authorization cards at that time, including Suits, Brian Stone, and Mark Lane. Kelly held a second meeting on June 3 to accommodate those employees who could not attend the May 29 meeting, at which time two more employees signed union cards. At the time of the union organizational campaign in late May and early June, there were approximately 12 employees working at Respondent's facility. This count does not include either Rosalie or Debra Mitchell, who were employed during the indicated period as bookkeeper and part-time truckdriver, respectively.

On June 6 (a Friday), Kelly and another union business agent (John Thorpe) met with Dale Mitchell at Respondent's facility. They identified themselves and stated that they had been authorized by a majority of Respondent's employees to represent them in collective bargaining. Kelly testified they also told Mitchell that they had enough union cards signed and requested voluntary recognition, which Mitchell declined to give them at that time. Before leaving Respondent's facility, Kelly gave Mitchell his business card and told him he would call the following Monday (June 9) for Mitchell's decision.

On June 12, the Union filed a representation petition and, pursuant to a "Stipulation for Certification Upon Consent Election" approved by the Regional Director for the Region 33 on June 26, an election by secret ballot was conducted at Respondent's facility on August 5. Suits' ballot was challenged by a Board agent because his name did not appear on the list of eligible voters. The

[3] All dates hereinafter are 1980 unless otherwise indicated.

[4] See fn. 2, *supra*.

Union contends that Suits was eligible to vote on the ground that Respondent unlawfully discharged him prior to the election. The tally of ballots showed the results of the election were 4 votes cast for the Union, 4 votes against, and 3 challenged ballots. Challenges were sufficient to affect the results of the election. Respondent and the Union agreed that two of the three challenges be sustained. Only the challenge to the ballot of Suits remains at issue.

2. The interrogation, threat, and promises

On Saturday, June 7, between 7 and 8 a.m., Dale Mitchell held a meeting with his employees at Respondent's facility. Present were Dale, Rosalie, and Debra Mitchell, and all of the employees, with the exception of Suits. During the meeting Dale Mitchell passed around Patrick Kelly's business card and asked the assembled group who had contacted the Union and how they got in touch with it. No one volunteered any information about knowing Kelly or about any union activities. All three of the Mitchells asked the employees what their problems were, and Dale Mitchell wanted to know why they had not talked to him first before going to the Union. Mitchell also told them that he could not afford to pay union wages, that he would either shut the doors or sell the business before he would let in the Union, and that if the Union did come in there might be layoffs and some other cuts.[5]

3. Attendance and preceding circumstances of Suits' discharge

Suits was employed by Respondent as a truckdriver from October 1, 1979, until June 7 and worked continuously until June 3, even during and after a labor dispute at Respondent's facility in January when all of Respondent's other employees walked out. Suits generally worked from 10 to 13 hours daily for Respondent. He initiated the contact with the Union in late May through telephone calls and personal contacts after business hours with Kelly and Tiny Dugan of the Teamsters Union. He attended the first organizational meeting on May 29 and signed a union authorization card at that meeting.

On June 3, Suits was stopped twice by police while driving one of Respondent's trucks. He was arrested on the second occasion and taken to jail. The arresting officer told Suits that he was driving with a suspended license. Suits called Dale Mitchell, explained what had happened, requested that someone pick up the truck, and asked that a friend of his be contacted and asked to post bail money. After bail was posted, that same day Suits returned to Respondent's facility with the son of the friend who had bailed him out, Kenneth Ague. Ague had accompained Suits in the truck that day and stayed with the truck when Suits was taken off to jail. He was with Suits when the latter returned to Respondent's facility and spoke with Dale Mitchell. Suits explained to Mitchell what had happened and that he was going to see his attorney, Julius Litton, in East Moline, to get it all straightened out. Mitchell responded with an "okay." Then Suits, accompanied by Ague, went to see the lawyer and returned to Respondent's facility where, again in the presence of Ague, he told Mitchell that he had gotten the license straightened out at his end but that his attorney had advised him not to go back on the road until at least the following Monday (June 9) to give the State time to straighten it out otherwise he would just be picked up again. According to Suits, Mitchell replied that if it took any longer than the following Monday (June 9) to be sure to call him, and Suits responded that he would. At that time, Mitchell did not tell Suits to call him on a daily basis nor did he offer him any other work until he could get the license matter resolved, and Suits did not tell Mitchell he would perform no job for him other than driving a truck.[6] Suits also testified that he had never refused any kind of work Mitchell offered him and did not on that occasion.

Rosalie and Dale Mitchell's version of the June 3 events does not vary significantly from that of Suits and Ague. Rosalie testified that she overheard that portion of the first conversation between Dale and Suits, upon the latter's return after his release from jail, when Dale told Suits to be sure to let him know how he was coming along and Suits replied that he would. Dale Mitchell himself testified he told Suits in that conversation to let him know as soon as he could find out anything and that he needed to know because if she was involved with the State, Mitchell's experience had been that the State did not work fast, especially with respect to drivers' licenses.

After the last conversation with Mitchell at Respondent's facility on June 3, Suits left and did not return until Saturday morning, June 7, when he came in to pick up a paycheck. Suits did not report for work, nor did he call in, on June 4, 5, 6, or 7. While acknowledging that he was at all times aware of Respondent's policy which required an employee to call and notify one of Respondent's principals on those days when the employee is unable to work, Suits testified that he did not call in on June 4, 5, 6, or 7 because he had told Dale Mitchell on June 3 that he would be off until at least the following Monday (June 9) and Mitchell had told him to call in if it took any longer than Monday to get his license straightened out. Suits had never been counseled by Respondent regarding attendance, but had been absent from work between January 23 through 28 when his wife died. On that occasion, he testified that he did not call in daily because Mitchell knew where he was.

Both Mitchells testified that there would have been other kinds of work available for Suits had he reported for work, but neither indicated that this fact had been communicated to him. While Dale Mitchell testified that he took it for granted that Suits would be in the following day (June 4), he acknowledged that he had not told him to report in and that there was no company policy that provided for a driver without a license to perform other duties until restoration of his license.

[5] Although the Mitchells did testify, no testimony was offered by Respondent to refute the foregoing version of the June 7 meeting, which was related by two of Respondent's employees who attended the meeting (Brian Stone and Mark Lane).

[6] Ague's testimony concerning the events of June 3 is similar to the foregoing version, as testified to by Suits, in all material respects.

On Saturday morning, June 7, when Suits returned to Respondent's facility to pick up his paycheck, Dale Mitchell told him that he could not give it to him on account of a problem with a wage assignment. When Mitchell refused or failed to divulge details of the assignment, Suits went to see his attorney, Litton. Litton made a couple of telephone calls, one of which was to Respondent's attorney who advised Litton that Suits was terminated. This was the first that Suits learned he had been discharged. Mitchell had not communicated that fact to him earlier that morning when Suits had come in and talked with Mitchell about his paycheck. Suits left his attorney's office and returned to Respondent's facility where he had a second conversation with Dale Mitchell about his check, the essence of which was that Mitchell told him he could not give it to him then because of the wage assignment but would mail it to him. When Suits was about to leave, Mitchell opened the top drawer of his desk and withdrew a white card, showed it to Suits who was standing 15 to 20 feet away, and asked: "Do you know anything about this?" Suits, who was too far away to read the card, only smiled, turned around and walked out of Mitchell's office. Suits did not know whether Mitchell had any knowledge of his union activities. He himself did not advise Mitchell of them and had not engaged in any on company property. Suits testified that the license suspension case against him was later dismissed and he received a refund of the bail money on June 29.

For their part, both Dale and Rosalie Mitchell testified later they had no knowledge of Suits' union activities prior to the time he was terminated and that he was not discharged because he was involved with the Union. They also denied knowledge of any union activity or of any involvement with the Teamsters Union prior to the afternoon of June 6 when Patrick Kelly and John Thorpe sought voluntary recognition of the Union by Dale Mitchell. The latter testified that on June 5 he had decided if Suits did not call in or report on June 6 he would be terminated. In Respondent's "1980 daily log book,"[7] which Dale Mitchell used to record certain daily information relating to the business including names of absent and tardy employees, the following penciled entries pertaining to Suits appear on the sheets for the indicated dates: June 3—"Alva Suits 1/2 day—License suspended"; June 4—"Alva Suits off no call"; June 5—"Alva Suits off no call"; and June 6—"Alva Suits off no call"—"terminated." The word "terminated," also written in pencil, appears to have been entered by use of a different pencil than used to write "Alva Suits off no call." The log book also contains entries relating to other drivers including one who was indicated to have been in the status of "off no call" on each of the 5 days, *viz*, May 19 through 23. The sheet for May 23 also contains the entry "no call, Quit?" The sheet for May 24 contains the entry: "Alva Suits off—No call—I called him." Certain other sheets for dates prior to June 6 contain entries indicating other employees had not either reported or called in. None of the entries indicate that any of the employees involved were terminated. The sheet for May 31, however, does contain an entry that one of the drivers was terminated because: "[W]hen told he was laid off for no license, he walked out."

When Suits had not called in or reported by 9:30 a.m. on June 6, Mitchell testified that he discharged him that day. He did not communicate that fact to Suits that day or on the following day, June 7, when Suits came in to pick up his check, but later on June 7 he instructed his attorney to tell Suits' attorney "that Suits is fired." The Mitchells testified to uncertainty as to how to handle a wage assignment notice[8] they had been served with for Suits and that on June 7, when Suits came to pick up his check, they told him they could not give it to him until the matter was straightened out. The notice dated April 28 was reportedly received three or four pay periods previous to June 7. After Suits was discharged and received his final check, they later gave him the money they had withheld by virtue of the wage assignment.

The Mitchells testified to a walkout of seven employees in January, as well as to certain "problems" caused by them involving overtime compensation claims, and asserted that they believed their former employees, who walked off their jobs in January, had contacted the Union to organize their shop. The Mitchells' attorney also testified that Dale Mitchell had expressed such a belief when he telephoned on the afternoon of June 6 following the visit from the Union's Kelly and Thorpe. The attorney told Mitchell that he did not think it was Respondent's former employees because the Union had to have a showing of interest from its present employees. The attorney believed the latter conversation took place on Saturday, June 7.

Counsel for General Counsel, through Brian Stone and Mark Lane who at all times relevant were employees of Respondent,[9] sought to establish knowledge of the Union's organizational activities on the part of the Mitchells prior to June 6. Their testimony centered on an intercom system at Respondent's facility and discussions between employees at locations reportedly serviced by the intercom system.

Stone testified that there were speakers located in each bay where the trucks were parked, outside on the side and also "out back by the garden." The central box was located adjacent to Dale Mitchell's desk which was "the only one place you could talk into and broadcast it around the whole place." Stone knew the system was functional because he heard in or through Mitchell's office the sound of a friend outside cutting up "pilots." Stone had a discussion concerning the Union with fellow employees "out back by the garden" where a speaker was located. He also had discussions about the Union in May and June with a fellow employee who was a "good friend" of Dale Mitchell. These took place on the garbage route and also on Respondent's premises in the bay area and outside near a speaker.

Mark Lane testified that in May he had several discussions with Suits about getting the Union to represent Re-

[7] Resp. Exh. 5.

[8] Resp. Exh. 1.

[9] Brian Stone and Mark Lane were subsequently discharged by Respondent. Their discharges were not here alleged to have been in violation of the Act.

spondent's employees which took place in the Respondent's parking lot before and after work. He also had discussions concerning the Union with other employees in the parking lot and while performing maintenance on and washing the trucks just outside Respondent's building near the intercom speakers. Lane also testified that he knew the intercom system worked because when he was in Dale Mitchell's office he could hear what was going on outside sometimes, like people talking or a tractor running.

Debra and Dale Mitchell testified that the intercom system was broken down for a good portion of the spring and summer of 1980 and that, while voices and noises could be heard when the intercom was operating, words could not be made out of it. The intercom, which cost $15, was purchased by Dale Mitchell to permit him to hear if someone left a truck running.

B. *Concluding Findings*

Respondent offered no testimony to contradict the version of the June 7 meeting as related by two of Respondent's employees, Stone and Lane.[10] In fact, Dale Mitchell acknowledged his interrogation of the assembled group of employees. Thus, Stone and Lane's version of the June 7 meeting stands as undisputed fact[11] and must be credited. The interrogation of Respondent's employees by Dale Mitchell regarding their union activities and the union activities of their fellow employees was coercive and violative of Section 8(a)(1) of the Act; and the Mitchells' solicitation of employee grievances in context of the Union's organizational effort at Respondent's facility carried an implied promise that any grievances would be remedied if the Union were defeated, thus, violating Section 8(a)(1) of the Act.[12] Similarly, Dale Mitchell's threats of closing down the business or of selling it and his warnings of layoffs and other cuts were also violative of Section 8(a)(1). Although phrased in terms of his or his business' inability to afford union wages, Mitchell's threats and warnings made it clear that unionization was incompatible with job retention and advanced no objective facts to show that such adverse consequences of unionization were inevitable or that the process of collective bargaining could not result in a reasonable accommodation to all parties concerned.[13]

In respect to the discharge of Suits, the General Counsel contends that Suits was terminated because he initiated contact with and actively supported the Union in its organizational efforts at Respondent's facility in May and June. Respondent contends that Suits' discharge was based upon factors not related to his union activities, *viz* that he had been arrested for driving with a suspended driver's license and had failed to call in or report for work on June 4, 5, 6, and 7. It further asserts that the decision to fire Suits was made before Respondent had any knowledge that the Union was organizing the shop and that in any event there was no connection established between Suits and the organizational effort on the part of the Union. In support thereof, Respondent points to the failure of the General Counsel to offer direct evidence that the firing of Suits was for any reason connected with his union activity.

There is well-established Board precedent, however, that direct knowledge of an employee's union activities is not a *sine qua non* for a finding that he has been discharged for such activities. On the contrary, such knowledge may be inferred from the record as a whole.[14]

On the basis of the record in this case, particularly the following factors, it is concluded that such an inference may be and should be drawn: (1) the small number of employees at Respondent's facility; (2) the discussions about the Union on the Company's premises, some of which involved Suits; (3) the existence of an intercom system under the control of Respondent in areas where some of the discussions took place; (4) the timing of Respondent's discharge of Suits, which took place simultaneously with, or shortly after, the Union's demand for recognition; (5) the fact that the employee most active in the organizational effort and the one who was instrumental in bringing in the Union was discharged; (6) the fact that Suits had never been counseled about his work attendance, had worked long hours, and was the only employee that did not walk out when Respondent experienced a mass walkout of employees in January; and (7) the fact that Respondent's discharge was out of character with, and a departure from, its handling of other employees under similar circumstances.

I find that Respondent's asserted reason for discharging Suits, namely, for a suspended license and failing to call in or report for work on June 4, 5, 6, and 7, was not the real one. Suits, whose testimony I credit fully in light of his testimonial demeanor and candor, told Mitchell on Tuesday, June 3, that his attorney was getting the license matter resolved but that it would not be fully worked out with the State until Monday, June 9, and in the meantime he could not go back on the road. Mitchell did not demur but asked Suits to be sure to call in if it took any longer than the following Monday (June 9). Suits responded that he would. Mitchell did not tell Suits to call him on a daily basis, nor did he offer any other work until he could get the license difficulty resolved.

I find that Respondent terminated Suits because of his union activities and that his discharge violated Section 8(a)(3) and (1) of the Act. I further find that in Case 33-RC-2630, in light of his unlawful discharge prior to the election, Suits was eligible to vote in the election by secret ballot conducted on Respondent's premises on August 5. Inasmuch as the challenge to Suits' ballot remains at issue and his ballot, if counted, could affect the results of the election, the challenge should be overruled, Suits' ballot should be opened and counted, and a revised tally of ballots issued.

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[10] See fn. 5, *supra*.

[11] *Locke Insulators, Inc.*, 218 NLRB 653 (1975).

[12] *Permanent Label Corporation*, 248 NLRB 118, 129-130 (1980). *Landis Tool Company, Division of Litton Industries v. N.L.R.B.*, 460 F.2d 23 (3d Cir. 1972), cert. denied 409 U.S. 915.

[13] *Ely's Foods, Inc. d/b/a Scotto's I.G.A.*, 249 NLRB 909, 913 (1980).

[14] *Wiese Plow Welding Co., Inc.*, 123 NLRB 616 (1959).

CONCLUSIONS OF LAW

1. Mitchell's Disposal Service is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 371, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by: (a) interrogating its employees regarding their union activities and sympathies and the union activities and sympathies of their fellow employees; (b) soliciting employee complaints and grievances, thereby promising its employees increased benefits and improved terms and conditions of employment if the Union was defeated; (c) threatening its employees that it would sell the business and shut down before it let the Union come in; and (d) threatening its employees that if the Union came in, some employees would lose their jobs.

4. Respondent violated Section 8(a)(3) and (1) of the Act when it discharged its employee Alva F. Suits on June 7, 1980.

5. In Case 33-RC-2630, Alva F. Suits was eligible to vote in the election by secret ballot conducted on Respondent's premises on August 5, 1980.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent unlawfully discharged Alva F. Suits, I shall recommend that Respondent be ordered to offer him immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights and privileges. I shall further recommend that Respondent be ordered to make him whole for any loss of earnings he may have suffered as a result of the discrimination against him by payment to him the amount he normally would have earned from the date of his termination until the date of Respondent's offer of reinstatement, less net earnings, to which shall be added interest to be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950) and *Florida Steel Corporation*, 231 NLRB 651 (1977).[15]

Further, for the reasons set forth above, I shall recommend that Case 33-RC-2630 be remanded to the Regional Director to open and count the ballot of Alva F. Suits and to issue a revised tally of ballots and appropriate certification.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[16]

The Respondent, Mitchell's Disposal Service, Inc., East Moline, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees regarding their union activities and sympathies and the union activities and sympathies of their fellow employees.

(b) Soliciting employee complaints and grievances, thereby promising its employees increased benefits and improved terms and conditions of employment.

(c) Threatening its employees that it will sell the business and shut down before it lets the Union come in.

(d) Threatening its employees that if the Union comes in, some employees would lose their jobs.

(e) Discharging or otherwise discriminating against employees in regard to hire or tenure of employment, or any term or condition of employment, because they engage in union activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to engage in or refrain from engaging in any or all of the activities specified in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer Alva F. Suits immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered as a result of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its East Moline, Illinois, place of business copies of the attached notice marked "Appendix."[17] Copies of said notice, on forms provided by the Regional Director for Region 33, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

[15] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[17] In the event this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director for Region 33, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that Case 33-RC-2630 be remanded to the Regional Director for Region 33 to open and count the ballot of Alva F. Suits and to issue an appropriate certification and take such further action as is deemed appropriate.